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Human Rights and Policing

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Session Outline

Understanding the Charter

- Introduction-Facilitator and participants
- The Charter and myth busting
- Activity-Charter Rights

Applying the Charter

- Decision making
- Limitation vs Breaches
- Activities-Scenarios



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Outcomes

At the end of this session, you should understand:

- Police obligations and the Charter rights protected in Victoria
- The difference between limitations and breaches
- How to apply human rights decision-making to our work

Activity



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1. On a scale of 1-10, 10 being the highest, rate your knowledge of the Charter of Human Rights
2. What do you know about the Charter?



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The Charter

1. Where does the Charter come from?
2. Why do we need a Charter?
3. How does the Charter work?

20 Charter Rights



- s-8** Recognition and equality before the law
- s-9** Right to life
- s-10** Protection from torture and cruel, inhuman or degrading treatment
- s-11** Freedom from forced work
- s-12** Freedom of movement
- s-13** Protection of privacy and reputation
- s-14** Freedom of thought, conscience, religion and belief
- s-15** Freedom of expression
- s-16** Right to peaceful assembly and freedom of association
- s-17** Protection of families and children
- s-18** Entitlement to participate in public life (including voting)
- s-19** Cultural rights, including recognition of the distinct cultural rights of the Aboriginal people of Victoria
- s-20** Property rights
- s-21** Right to liberty and security of person
- s-22** Humane treatment when deprived of liberty
- s-23** Appropriate treatment of children in the criminal process
- s-24** Fair hearing
- s-25** Rights in criminal proceedings
- s-26** Right not to be tried and punished more than once
- s-27** Protection from retrospective criminal laws



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Mandatory requirements for Police

S.38- Conduct

- It is unlawful for public authorities to breach a human right or fail to give proper consideration to protected rights

S.32 Interpretation

- Laws must be interpreted compatibly with rights so far as possible and consistent with their purpose

S.7 Limitations

- If you must limit a right, it must be reasonable, necessary and justified

Myth Busting: Limiting vs Breaching human rights



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S.7 Limitations

- If you must limit a right, it must be reasonable, necessary and justified

A human right may only be limited if:

- The limit is provided by law
- It is for evidence based reasons
- It is demonstrably justified
- It is proportionate to the objective you seek to achieve



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Limiting a persons rights under the Act

- S7 – (2) A human right may be subject under law only to such reasonable limits as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom, and taking into account all relevant factors including—
 - (a) the nature of the right; and
 - (b) the importance of the purpose of the limitation; and
 - (c) the nature and extent of the limitation; and
 - (d) the relationship between the limitation and its purpose; and
 - (e) any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.

Police Role



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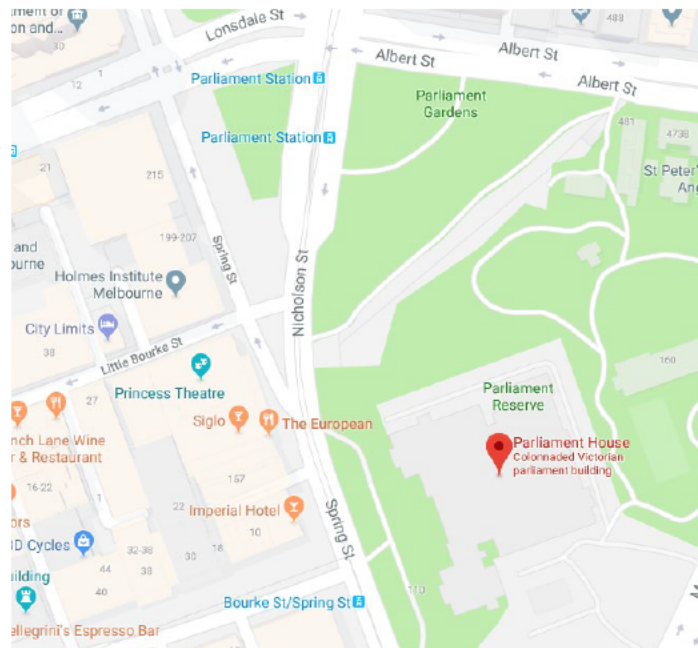
- Facilitate the communities right to exercise free speech, peaceful assembly protest or industrial action.
- Provide a safe, orderly and secure society, so when the actions of those taking part in such activities either become unlawful or infringe upon the rights of others, police have an obligation to take action, using the minimum amount of force necessary.
- Detect and prevent criminal offences and apprehend persons suspected of committing criminal offences.



The Less Restrictive Principle

We must always consider whether there is another way to achieve our objective.

- Don't use a sledgehammer to crack a nut





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Strike the right balance

In some circumstances we may lawfully limit a person's human rights. This can only be done to the extent that it is reasonable and can be justified.

All limitations of a human right must be:

- **Authorised by law**
- **Necessary, reasonable and proportionate**
- **The less restrictive alternative.**



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Charter of Human Rights and Responsibilities Act 2006

- S15 – (2) Every person has the right to freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds
- (3) Special duties and responsibilities are attached to the right of freedom of expression and the right may be subject to lawful restrictions reasonably necessary
 - To respect the rights and reputation of other persons; or
 - For the protection of national security, public order, public health or public morality.
- S16 – (1) Every person has the right of peaceful assembly.



Key messages

Human rights are about:

- Recognising the humanity in every single person
- Putting a human being at the front and centre of all our policing decisions and activities



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Case Study

Caripis vs Victoria Police (2012)

- CARIPIS made an application to VCAT in regards to her privacy under the relevant provisions of the Information Privacy Act.
- Victoria Police did record the image of Caripis, along with many other persons who attended a Climate Change protest at Hazelwood power station on 10/10/10.
- The images taken didn't identify her and the images taken lasted for approx. twenty seconds over four separate occurrences.



33(1)



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Caripis vs Victoria Police

- CARIPIS was a member of “Switch Off Hazelwood”
- Protest endorsed by number of environmental groups and formed part of International day of Climate Change
- Protest was peaceful and good-natured with no unlawful activity and no arrests
- Three Police officers took 70 minutes of footage and seven still photographs accompanied by 124 minutes of aerial video footage (Police helicopter).
- Disk stored in a locked cupboard at Morwell Crime Desk.



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Caripis vs Victoria Police

CARIPIS appears in four segments of ground level footage, her image is visible for less than 20 seconds.

Police (Superintendent WALSH) said footage of the 2009 mass protest had been used in the briefing and planning session which prepared Police for the 2010 protest. The 2010 footage is needed for the purpose of “briefing purposes in the event of future protests at Hazelwood and other power stations. I am very confident that there will be further climate change protest activity in the Latrobe Valley.

Conclusion



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Section 19 of the Public Records Act 1973 provides that it is an offence to damage or destroy a public record unlawfully. “As the images are public records, destruction or de-indentification of the images pursuant to I.P.P 4.2 is subject to any retention requirements under the Public Record Act.

“I have already concluded that the complainants human rights are not engaged (or interfered with) by the retention of protest footage

The complainant has not established that the retention of the protest footage including images of her is an interference with her privacy under the Information Privacy Act 2006 and the complaint is dismissed.



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Victorian Government Solicitors Office

Freedom of expression/peaceful assembly

36. The Tribunal in *Caripis* found that where photographs are taken by all sorts of people at a protest and some will appear on public websites (which was known to protestors) and the police collected no other data about the complainant - not even her name - was not inconsistent with these rights.²⁷ The Tribunal distinguished this from circumstances where there has been extensive collection of data over many years, including the names of persons concerned.²⁸
37. When taking, using or retaining protest footage, Victoria Police must be mindful of the types of issues considered by the Tribunal in *Caripis*, particularly whether the protest footage will be collected alongside identifying information and whether data has been collected about the individuals previously. Where these individuals are offending, the limitation of these rights will be reasonable and justified under s 7(2) of the Charter Act. However, it would be harder to justify the collection and retention of protest footage, alongside identifying information, of peaceful protesters.
38. Where the protest in question is not peaceful, s 16 of the Charter is not relevant.



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Considerations for Victoria Police

42. The PDP Act and the Charter Act require consideration by Victoria Police of whether, among other things, the taking, use and retention of protest footage is actually necessary for an identified law enforcement purpose and also, whether such actions amount to an interference with a relevant human right. This is reflected in Victoria Police policy which states that '[i]t is essential that the gathering and recording of information is justified and gives proper and full consideration to the individual's human rights, their dignity, respect and their rights to privacy.'³¹
43. The PR Act mandates the retention of public records (once created or received), so that once protest footage is taken, its retention is dictated by the PR Act. Once collected, the issue is the manner in which protest footage can lawfully be retained and used.



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Summary of our advice

2. The taking, use and retention of protest footage will be lawful if the protest footage is reasonably required for identified law enforcement purposes. In each case, Victoria Police should consider whether the taking, use and storage of protest footage is actually necessary for a specific and identifiable purpose (not hypothetical) contemplated by Information Privacy Principle (IPP) 2.1.
3. Once the protest footage is no longer needed for any such purpose, IPP 4.2 requires that it be de-identified or destroyed. However, this is subject to retention requirements set out in the *Public Records Act 1973* (**the PR Act**). The PR Act mandates retention of public records (such as protest footage) generally for a specified period of 7 years. (The attached table sets out public records retention requirements relevant to police for protest footage).
4. Finally, Victoria Police should only retain protest footage together with other identifying information about participants where there is a valid law enforcement purpose. In other words, unless a law enforcement purpose can be identified to obtain identifying information (other than the protest footage) in relation to participants (particularly non-offending participants), it should not be collected or retained in a data processing system.



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Questions...

